

Senate G.O.P. Chief Backs Restrictions on President's Warmaking Powers

By JOHN W. FINNEY

Special to The New York Times

WASHINGTON, July 27 — Hugh Scott of Pennsylvania, the Senate Republican leader, threw his support today behind proposals to put legislative restrictions on the warmaking powers of the Presidency.

The Senator thus broke with the Nixon Administration, which has opposed any legislation on war powers on the ground that it would interfere with the President's flexibility in foreign policy. Earlier this month Representative Gerald R. Ford, the House Republican leader, endorsed the general concept of legislation being advanced in the Senate.

Bill May Emerge in Fall

In explaining at hearings of the Senate Foreign Relations Committee that he had "come down a long road to the conclusion" that Congress must reassert its powers on war, Senator Scott appeared to criticize practices in the Nixon Administration as well as previous administrations. Without Congressional action, he said he did not see how to stop the situation in which the executive branch "maintains as much secrecy as possible to the point of suffocation and isolation."

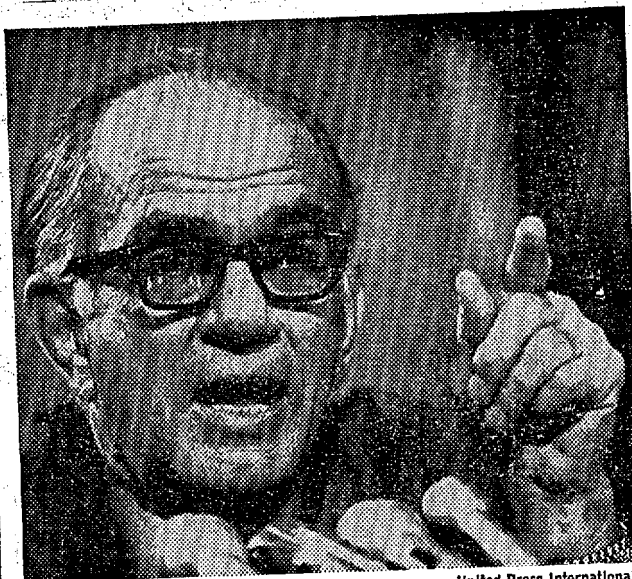
"The time has come," he

said, "when Congress will not be denied the right to participate, in accordance with the Constitution, in the whole enormous business of how wars are begun."

With Senator Scott's support, it now seems likely that the Foreign Relations Committee will report out a bill after the August Congressional recess,

forexamination by the legal and academic community as well as the executive branch. The hope of Senator J. W. Fulbright, the committee chairman, is that the Senate may consider the bill early next year.

What is widely expected to emerge from the committee is a blend of proposals offered



Sen. J. W. Fulbright testifying in Washington yesterday

by Senators Jacob K. Javits, Republican of New York, Thomas F. Eagleton, Democrat of Missouri; Lloyd M. Bentsen Jr., Democrat of Texas; Robert Taft Jr., Republican of Ohio, and John C. Stennis, Democrat of Mississippi. In various ways, their proposals would authorize the President to undertake military actions in certain emergency situations but specify that the President could not continue hostilities beyond a certain period without Congressional approval.

Meanwhile, a Senate Judiciary subcommittee headed by Sam J. Ervin Jr., Democrat of North Carolina, opened hearings on legislation to keep the executive branch from withholding information from Congress.

The subcommittee is considering a Fulbright bill that would require employees of the executive branch to appear before Congressional committees when summoned, even if they then declined to disclose information, claiming "executive privilege" approved by the President.

Senator Fulbright is planning to introduce a second bill that would specify that information could be withheld from Congress only on the basis of a formal invocation of executive

privilege approved by the President.

In an opening statement, Senator Ervin complained that the current executive branch's denial of information to Congress, on the ground that "no useful purpose" would be served, reflects "an apparent disdain for the right of the American people to be informed fully."

The same theme was picked up by Senator Fulbright, the opening witness, who charged that the Nixon Administration was conducting foreign policy through a White House "super-bureau" that is "shielded from Congress and the American people behind a barricade of executive privilege."

"The China visit," he said, "provides a striking example of the way in which the new foreign policy apparatus in the White House circumvents the Congress."

It would have been "useful and appropriate," he argued, for Henry A. Kissinger to have consulted with the Foreign Relations Committee before he went to China and to report now to the committee on his trip. Except for a few informal dinner meetings arranged through the committee staff, Mr. Kissinger, on orders from the White House, has refused

to meet with the Foreign Relations Committee.

Testifying before the Foreign Relations Committee on war powers legislation, George W. Ball, Under Secretary of State in the Kennedy and Johnson Administrations, said "the myth of executive privilege" had been "greatly exaggerated" by the executive branch. He said that Congressional committees "should be far better informed" on foreign policy decisions "that has been the practice in the past."

Mr. Ball applauded the efforts to reassert Congressional powers and thus "erect a carefully designed procedural impediment to the kind of creeping involvement to which we succumbed in Vietnam."

Opportunity for Objectivity

He said that Congress could be more objective and detached on the "hard questions" of hostilities since "recent experience has shown the executive may be so absorbed by operational problems—by tactics as opposed to strategy—that, instead of asking whether we should commit more forces to secure certain objectives—or indeed whether those objectives are worth the cost already incurred—he instead asks how can we utilize more resources to do the job."

Mr. Ball cautioned, however, against imposing too specific limitations on the President's warmaking powers, which might inhibit his flexibility in crises. At most, he suggested, a President should be required to receive Congressional approval within 30 days after committing forces to hostilities. This, he said, would serve as "a cautionary provision" that would "tend to deter Presidents."

Fulbright Will Seek A Voice on Funds of State Department

By JOHN W. FINNEY
Special to The New York Times

WASHINGTON, July 26— Senator J. W. Fulbright said today that he would propose that the State Department be required to obtain an annual legislative authorization for its appropriations that would be passed upon by the Senate Foreign Relations and House Foreign Affairs Committees.

The aim would be to make the department more responsive to the Foreign Relations Committee, which the Arkansas Democrat heads.

At present the budget requests of the State Department and of the United States Information Agency go directly to the House and Senate Appropriations Committees. These could be expected to resist any intrusion into their domain.

Committee Action Imminent

Senator Fulbright said in an interview that he intended to offer his proposal as an amendment to the foreign aid authorization bill, which his committee is to start considering later this week. At present the legislative jurisdiction of the Senate Committee and the House Foreign Affairs Committee is limited largely to the annual aid authorizations.

Mr. Fulbright described his proposal as a "response to the outrageous refusal of the State Department on many occasions to supply legitimate information to the committee." In a broader sense, he said, the proposal represents "another step in redressing the balance of power between the executive branch and Congress in the field of foreign policy."

The amendment would also require that the Secretary of State keep the Senate and House committees "fully and currently informed" on all departmental activities. The phrase was taken from the law requiring the Atomic Energy Commission to keep the Joint Congressional Committee on Atomic Energy so informed.

Senator Fulbright also said he expected his committee to report favorably on legislation imposing restrictions on the warmaking powers of the President. Such a step was endorsed in principle today by Prof. Alexander M. Bickel of the Yale Law School in testimony before the committee.

Contending that the Johnson Administration had committed the nation to war in Vietnam unconstitutionally, Professor Bickel said that "in matters of war and peace, a succession of Presidents — well-intentioned and patriotic—have come close to canceling the effectiveness of Congress." The result, he said, is "a dangerous contradiction of the principles of democratic government, which I believe ought to be set right."

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paid. The Air Force further notes that the indebtedness resulted in pay from administrative error and in part from circumstances related to the case. It further states that it regrets any error made in this case and the circumstances which led to the establishment of the indebtedness. The casual payments which form the basis of the indebtedness had not been properly recorded in Mr. Smith's pay accounts. The payments which were proper at the time were made and but for the fact that Mr. Smith was given an early discharge on the grounds of hardship, they would have been properly recorded in his pay account so that they would have been recognized at the time of his discharge.

The Air Force recognizes that when Mr. Smith requested these payments, he knew they represented pay and allowances due him. The Air Force further states that there is no evidence that at the time he received his final pay at the time of discharge he was aware that all the casual payments had not been recorded in his pay accounts. For these reasons, the Air Force stated that any question as to his good faith in the situation should be resolved in his favor.

In connection with its consideration of this bill, the committee secured additional information concerning the circumstances of Mr. Smith. The committee is advised that Mr. Smith has a wife and four children. The advance payments which are the subject of this bill were made to him in order to ease his problems in settling his family before he was sent overseas. His problems in this connection were complicated by a succession of changes in his orders and a disruption in allotments made to his family. After he was given a hardship discharge because of his family situation, he was unable to find work in Minnesota and moved to Maine. There a fifth child was born to the family and the child died a short period following birth. The wife subsequently required hospitalization for surgery and in March of 1969, the family suffered additional loss and difficulty when their home burned.

In view of the circumstances of this case and the indication by the Department of the Air Force that it would not object to the legislation, it is recommended that the bill be considered favorably.

The committee believes the bill is meritorious and recommends it favorably.

SGT. ERNIE D. BETHEA, U.S. MARINE CORPS (RETIRED)

The bill (H.R. 3753) for the relief of Sgt. Ernie D. Bethea, U.S. Marine Corps (retired), was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the Record an excerpt from the report (No. 92-289), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

PURPOSE

The purpose of the proposed legislation is to relieve Sgt. Ernie D. Bethea, U.S. Marine Corps (retired), of Newark, N.J., of liability to the United States in the amount of \$316.79, representing an overpayment of his active duty pay while serving in Vietnam with the Marine Corps.

STATEMENT

The facts of this case as contained in House Report No. 92-111 are as follows:

The Department of the Navy in its report to the committee on a similar bill in the 91st Congress stated that it supports the payment of the legislation.

The records of this Department reveal that Sergeant Bethea was severely wounded in

action in Vietnam on May 4, 1967. He was treated at the 3d Medical Battalion, 3d Marine Division, and evacuated to the U.S. Air Force Hospital, Clark Air Force Base, Philippines, on May 6, 1967. Sergeant Bethea was then air evacuated to the U.S. Naval Hospital, St. Albans, N.Y., on May 13, 1967, and finally transferred to the Veterans' Administration hospital, East Orange, N.J., on November 7, 1967. Sergeant Bethea's wounds resulted in the complete loss of use of his right arm, as well as other less serious impairments. As a result of his injuries, Sergeant Bethea was retired for physical disability on November 30, 1967.

Through administrative error, Sergeant Bethea continued to be paid active-duty pay and allowances for a short period after his retirement. As a consequence, he was overpaid \$316.79 and became indebted to the United States in that amount. During the period from July 1 through November 30, 1967, Sergeant Bethea earned active-duty pay and allowances of \$1,379.35. During this same period he received payments totaling \$899, plus authorized or required pay deductions for allotments, FICA tax, withholding tax and servicemen's group life insurance premiums of \$373.40, or total charges against his account of \$1,272.40. Thus, as of November 30, 1967, the date of his retirement, the sum of \$106.95 was due and unpaid to Sergeant Bethea. However, through administrative error, he received payments of \$78, \$90.74, \$85, \$85, and \$85 on December 15 and December 30, 1967, January 15 and January 30, 1968, and February 15, 1968, respectively—a total of \$423.74. The erroneous payment of \$423.74 was in addition to retired pay which Sergeant Bethea was paid commencing on December 1, 1967, at the monthly rate of \$118.92. This erroneous payment, offset by the \$106.95 which was due and unpaid at the time of separation, gives rise to Sergeant Bethea's debt of \$316.79.

In its report to the committee, the Department of the Navy outlined its policy concerning bills intended to relieve individuals of liability for overpayments. It stated that the Navy opposes legislation designed to relieve an individual of liability unless the indebtedness was occasioned through no fault of the service member and unless the overpayment was such that it was not detectable and could not reasonably have been expected to be detectable. The Navy investigation found no indication that the overpayment was the result of any fault or negligence on the part of Sergeant Bethea. The Navy further observed that the short duration of the overpayment makes it understandable that the overpayment could not be immediately detected. It, therefore, concluded that, under the circumstances, it is considered reasonable that Sergeant Bethea would accept the payments without questioning them.

The Navy notes that civilian employees under section 5584 of title 5 of the United States Code may be relieved for overpayments of pay where it is determined that the collections of the claim would be against equity and good conscience and not in the best interest of the United States. The Navy noted that the overpayment in Sergeant Bethea's case appears to be an analogous situation involving the overpayment of military pay.

In view of the facts of the case and the favorable position of the Department of the Navy, it is recommended that the bill be considered favorably.

In agreement with the views of the House of Representatives the committee recommends favorable consideration.

TRIBUTES TO THE LATE SENATOR

The resolution (S. Res. 149) to print additional copies of tributes to the late

Senator Richard B. Russell of Georgia was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. RES. 149

Resolved, That there be printed concurrently with the usual press run six hundred additional copies of Tributes to the late Senator Richard B. Russell of Georgia for the use of the Senate Committee on Rules and Administration.

Mr. MANSFIELD. Mr. President, ask unanimous consent to have printed in the Record an excerpt from the report (No. 92-290), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

The printing-cost estimate, supplied the Public Printer, is as follows:

Printing-cost estimate

600 additional copies at \$1,900 per thousand \$1,140

ORGANIZED CRIME

The resolution (S. Res. 152) authorizing the printing for the use of the Committee on Government Operations of additional copies of part 1 of its hearings entitled "Organized Crime," was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. RES. 152

Resolved, That there be printed for use of the Committee on Government Operations one thousand six hundred additional copies of part 1 of the hearings before the Permanent Subcommittee on Investigations during the Ninety-second Congress, first session, entitled "Organized Crime."

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the Record an excerpt from the report (No. 92-291), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

Senate Resolution 152 would authorize the printing for the use of the Committee on Government Operations of 1,600 additional copies of part 1 of the hearings before its Permanent Subcommittee on Investigations during the 92d Congress, first session, entitled "Organized Crime."

The printing-cost estimate, supplied by the Public Printer, is as follows:

Printing-cost estimate

1,600 additional copies at \$721.87 per thousand \$1,155

AUTHORIZATION FOR SPECIAL SUPPLEMENTARY EXPENDITURES BY THE COMMITTEE ON FOREIGN RELATIONS

The Senate proceeded to consider resolution (S. Res. 140) authorizing special supplementary expenditures by the Committee on Foreign Relations for inquiry and investigation pertaining to the making of policy relating to involvement in Southeast Asia, which had been reported from the Committee on Rules and Administration, with amendments. The amendments of the Committee on Foreign Relations are as follows:

On page 2, line 4, after the word "through

strike out "June 30, 1973" and insert "February 29, 1972"; in line 14, after the word "through", strike out "June 30, 1972" and insert "February 29, 1972"; and at the beginning of line 19, insert "including, but not limited to—"

"(a) the machinery for the making and conduct of foreign policy relating to national security;

"(b) institutional arrangements within Congress for handling foreign policy matters involving national security;

"(c) congressional access to executive branch personnel and documents and the doctrine of 'executive privilege';

"(d) procedures for classification and declassification of documents; and

"(e) arrangements for appropriate congressional participation in and oversight of executive branch agreements with and commitments to foreign countries."

The amendments of the Committee on Rules and Administration are as follows:

On page 2, line 15, after the word "of", strike out "\$250,000" and insert "\$100,000"; on page 3, at the beginning of line 8, strike out, "Of such \$250,000, not to exceed \$100,000 may be expended for the procurement of individual consultants or organizations thereof."; in line 10, after the word "the", insert "first"; in line 17, after the word "resolution", insert "Of such \$100,000, not to exceed \$50,000 (which shall be in addition to the second amount specified in such section 2) may be expended for the procurement of individual consultants and organizations thereof."; and, on page 4, line 1, after the word "than", strike out "June 30, 1973" and insert "February 29, 1972".

So as to make the resolution read:

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Foreign Relations, or any subcommittee thereof, is authorized from the date this resolution is agreed to, through February 29, 1972, for the purpose stated in section 2 and within the limitations hereinafter imposed in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

Sec. 2. The Committee on Foreign Relations, or any subcommittee thereof, is authorized from the date this resolution is agreed to through February 29, 1972, to expend not to exceed the sum of \$100,000 to examine, investigate, and make a complete study of any and all matters pertaining to the making of policy relating to United States involvement in Southeast Asia, including, but not limited to—

(a) the machinery for the making and conduct of foreign policy relating to national security;

(b) institutional arrangements within Congress for handling foreign policy matters involving national security;

(c) congressional access to executive branch personnel and documents and the doctrine of "executive privilege";

(d) procedures for classification and declassification of documents; and

(e) arrangements for appropriate congressional participation in and oversight of executive branch agreements with and commitments to foreign countries.

Such sum is in addition to the first amount

specified in section 2 of Senate Resolution 26, Ninety-second Congress, agreed to March 1, 1971, and was not included in that resolution because at the time at which that resolution was considered there was insufficient information to determine the scope of, and the total amount of expenditures required by, the study to be undertaken pursuant to this resolution. Of such \$100,000, not to exceed \$50,000 (which shall be in addition to the second amount specified in such section 2) may be expended for the procurement of individual consultants and organizations thereof.

Sec. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable with respect to the study or investigation for which expenditure is authorized by this resolution, to the Senate at the earliest practicable date, but not later than February 29, 1972.

Sec. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

The amendments were agreed to.

The resolution, as amended, was agreed to.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the Record an excerpt from the report (No. 92-292), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

Senate Resolution 140 as referred would authorize the Committee on Foreign Relations, or any subcommittee thereof, from the date of its approval through February 29, 1972, to expend not to exceed \$250,000 (of which amount not to exceed \$100,000 could be expended by the committee for the procurement of individual consultants or organizations thereof) to examine, investigate, and make a complete study of any and all matters pertaining to the making of policy relating to United States involvement in Southeast Asia, including, but not limited to—

(a) the machinery for the making and conduct of foreign policy relating to national security;

(b) institutional arrangements within Congress for handling foreign matters involving national security;

(c) congressional access to executive branch personnel and documents and the doctrine of "executive privilege";

(d) procedures for classification and declassification of documents; and

(e) arrangements for appropriate congressional participation in and oversight of executive branch agreements with and commitments to foreign countries.

These funds would be in addition to the \$325,000 authorized for use by that committee by section 2 of Senate Resolution 26, agreed to March 1, 1971.

After consultation with the Committee on Foreign Relations, the Committee on Rules and Administration has amended Senate Resolution 140 by reducing the requested amount from \$250,000 to \$100,000. (The portion of that amount which could be expended by the committee for the procurement of consultants has been reduced to \$50,000).

Additional amendments to Senate Resolution 140 approved by the Committee on Rules and Administration are as follows:

(1) On page 3, beginning with "Or" in line 4, strike out through the period in line 6.

(2) On page 3, line 6, immediately before "amount" insert "first".

(3) On page 3, line 12, after the period,

insert the following: "Of such \$250,000, not to exceed \$100,000 (which shall be in addition to the second amount specified in such section 2) may be expended for the procurement of individual consultants and organizations thereof."

(4) On page 3, lines 18 and 19, strike out "June 30, 1973" and insert in lieu thereof "February 29, 1972".

The first three are technical or perfecting amendments, necessary to put the proposal in due form. Amendment (4) would provide that, consistent with Rules Committee policy, the reporting date would not extend beyond the terminal date of the authorization itself.

Pursuant to the requirement stipulated in section 133(g) of the Legislative Reorganization Act of 1946, Senate Resolution 140 contains the following statement of the reason why authorization for the expenditures described therein could not have been sought at the time of the submission by such committee of an annual authorization resolution for this year:

"Such sum . . . was not included in that resolution because at the time at which that resolution was considered there was insufficient information to determine the scope of, and the total amount of expenditures required by, the study to be undertaken pursuant to this resolution."

AUTHORIZATION OF APPROPRIATIONS FOR THE COMMISSION

The bill (H.R. 7271) to authorize appropriations for the Commission on Civil Rights was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the Record an excerpt from the report (No. 92-293), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the Record as follows:

PURPOSE AND COSTS

The purpose of H.R. 7271 is to increase the annual authorization for the Commission on Civil Rights from \$3,400,000 to \$4 million.

The committee estimates that the increase in authorization provided by H.R. 7271 would entail an additional cost of not more than \$600,000 for fiscal 1972. Under existing law the term of the Commission on Civil Rights expires January 31, 1973 (sec. 1975c(b), tit. 42, United States Code). Unless the term of the Commission is extended, it is expected that fiscal 1973 appropriations will be a proration of this amount. The accompanying table sets forth an itemized explanation of the proposed \$600,000 increase in the Commission's annual authorization for appropriations:

U.S. COMMISSION ON CIVIL RIGHTS—INCREASE IN FISCAL YEAR 1972 BUDGET REQUEST, BY OBJECT CLASSIFICATION

(In thousands of dollars)

	Fiscal year 1971 estimate	Fiscal year 1972 estimate	Increase
Personnel compensation:			
Permanent positions	2,094	2,381	2
Positions other than permanent	136	149	
Other personnel compensation	32	32	
Special personal service payments	2	2	
Total personnel compensation	2,264	2,564	3

Footnotes at end of section.